

1-1 By: Williams S.B. No. 957
1-2 (In the Senate - Filed March 3, 2005; March 14, 2005, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 20, 2005, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; April 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the powers and duties of the Texas Department of
1-9 Licensing and Regulation.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (a), Section 51.202, Occupations
1-12 Code, is amended to read as follows:

1-13 (a) The commission shall set fees, in amounts reasonable and
1-14 necessary to cover the costs of administering the programs or
1-15 activities, for:

- 1-16 (1) licenses issued by the department;
1-17 (2) license renewals and late renewals;
1-18 (3) examinations; ~~and~~
1-19 (4) continuing education; and
1-20 (5) any other program or activity administered by the
1-21 department for which a fee is authorized.

1-22 SECTION 2. Subchapter D, Chapter 51, Occupations Code, is
1-23 amended by adding Section 51.209 to read as follows:

1-24 Sec. 51.209. SUBPOENA. (a) The commission or executive
1-25 director may request and, if necessary, compel by subpoena:

1-26 (1) the production for inspection and copying of
1-27 records, documents, and other evidence relevant to the
1-28 investigation of an alleged violation of this chapter, a law
1-29 establishing a regulatory program administered by the department,
1-30 or a rule adopted or order issued by the commission or executive
1-31 director; and

1-32 (2) the attendance of a witness for examination under
1-33 oath.

1-34 (b) A subpoena may be issued throughout the state and may be
1-35 served by any person designated by the commission or executive
1-36 director.

1-37 (c) The department, acting through the attorney general,
1-38 may bring an action to enforce a subpoena issued under this section
1-39 against a person who fails to comply with the subpoena.

1-40 (d) Venue for an action brought under this section is in a
1-41 district court in:

- 1-42 (1) Travis County; or
1-43 (2) any county in which the department may hold a
1-44 hearing.

1-45 (e) The court shall order compliance with the subpoena if
1-46 the court finds that good cause exists to issue the subpoena.

1-47 (f) The authority of the commission or executive director to
1-48 issue a subpoena under this section may not be delegated to another
1-49 person.

1-50 SECTION 3. Section 51.353, Occupations Code, is amended to
1-51 read as follows:

1-52 Sec. 51.353. LICENSE REFUSAL; ADMINISTRATIVE SANCTIONS.

1-53 (a) The commission shall revoke, suspend, or refuse to issue or
1-54 renew a license or shall reprimand a license holder for a violation
1-55 of this chapter, a law establishing a regulatory program
1-56 administered by the department, or a rule or order of the commission
1-57 or executive director.

1-58 (b) The commission may probate the suspension of a [~~place on~~
1-59 ~~probation a person whose~~] license [~~is suspended~~]. If a license
1-60 suspension is probated, the commission may require the person to:

- 1-61 (1) report regularly to the department on matters that
1-62 are the basis of the probation;
1-63 (2) limit practice to the areas prescribed by the
1-64 commission; or

2-1 (3) continue or renew professional education until the
 2-2 person attains a degree of skill satisfactory to the commission in
 2-3 those areas that are the basis for the probation.

2-4 SECTION 4. Subchapter G, Chapter 51, Occupations Code, is
 2-5 amended by adding Sections 51.355 and 51.356 to read as follows:

2-6 Sec. 51.355. CEASE AND DESIST ORDERS. The executive
 2-7 director may issue a cease and desist order if the executive
 2-8 director determines that the action is necessary to prevent a
 2-9 violation of:

- 2-10 (1) this chapter;
 2-11 (2) a law establishing a regulatory program
 2-12 administered by the department; or
 2-13 (3) a rule adopted or order issued by the commission or
 2-14 executive director.

2-15 Sec. 51.356. EMERGENCY ORDERS. (a) The executive director
 2-16 may issue an emergency order, including an order to suspend or
 2-17 revoke a license or to cease operation of unsafe equipment,
 2-18 including an unsafe elevator or unsafe boiler, if the executive
 2-19 director determines that an emergency exists requiring immediate
 2-20 action to protect the public health and safety.

2-21 (b) The executive director may issue the emergency order
 2-22 with or without notice and hearing as the executive director
 2-23 considers practicable under the circumstances.

2-24 (c) If an emergency order is issued under this section
 2-25 without a hearing, the executive director shall set the time and
 2-26 place for a hearing conducted by the State Office of Administrative
 2-27 Hearings to affirm, modify, or set aside the emergency order not
 2-28 later than the 10th day after the date the order was issued. The
 2-29 order shall be affirmed to the extent that reasonable cause existed
 2-30 to issue the order.

2-31 (d) The commission by rule may prescribe procedures for the
 2-32 determination and appeal of an emergency order under this section,
 2-33 including a rule allowing the commission to affirm, modify, or set
 2-34 aside a decision made by the State Office of Administrative
 2-35 Hearings under Subsection (c).

2-36 (e) A proceeding under this section is a contested case
 2-37 under Chapter 2001, Government Code.

2-38 SECTION 5. Subchapter H, Chapter 51, Occupations Code, is
 2-39 amended by adding Sections 51.407, 51.408, and 51.409 to read as
 2-40 follows:

2-41 Sec. 51.407. DEFERRED ADJUDICATION; REFUSAL TO ISSUE OR
 2-42 RENEW LICENSE. The commission may refuse to issue or renew a
 2-43 license if the commission determines that a deferred adjudication
 2-44 makes the person seeking the license unfit for a license.

2-45 Sec. 51.408. TEMPORARY LICENSE. (a) The commission by
 2-46 rule may provide for the issuance of a temporary license to an
 2-47 applicant who:

2-48 (1) submits to the executive director an application
 2-49 on a form prescribed by the executive director;

2-50 (2) meets preliminary qualifications established by
 2-51 commission rule; and

2-52 (3) pays the required fees.

2-53 (b) A temporary license expires on the 21st day after the
 2-54 date of issuance and may not be renewed.

2-55 (c) A temporary license holder is subject to:

2-56 (1) this chapter;

2-57 (2) any law applicable to the activity for which the
 2-58 license is required; and

2-59 (3) any rule or order of the commission or the
 2-60 executive director applicable to the license.

2-61 Sec. 51.409. EMERGENCY LICENSE. (a) The executive
 2-62 director may issue an emergency license to a person who meets
 2-63 eligibility requirements provided by:

2-64 (1) a law establishing a regulatory program
 2-65 administered by the department; or

2-66 (2) a rule adopted to implement this section.

2-67 (b) The license expires on the date indicated by the
 2-68 executive director, but may not exceed the 90th day after the date
 2-69 of issuance.

3-1 (c) The emergency license holder may engage in the
3-2 activities indicated by the type of license only:

3-3 (1) during a time declared as a state of disaster and
3-4 the following recovery period; and

3-5 (2) in an area designated as a disaster area by:

3-6 (A) the governor; or

3-7 (B) the presiding officer of a governing body of
3-8 a political subdivision.

3-9 SECTION 6. This Act takes effect September 1, 2005.

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